IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL No. 2200 of 2004

AND

WRIT PETITION No.10618 OF 2004

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WRIT APPEAL No. 2200 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17/11/2004 in WPMP No.25902 of 2004 in WP No. 10618 OF 2004 on the file of the High Court.)

Between:

Balla Lakshmana Rao, S/o. Nageswara Rao, Hindu,
R/o. Indira Nagar, Near S.P. Bangalow, Vizianagaram, Vizianagaram District.

..... APPELLANT

AND

1.The District Collector, Vizianagaram District, Vizianagaram.
2.The Vizianagaram Municipality, Vizianagaram, Rep. by its Commissioner,
3.The Vizianagaram Municipality, Vizianagaram, Rep. by its Engineer, Grade-I, Vizianagaram.
4.The Vizianagaram Municipality, Vizianagaram, Rep. by its Deputy Executiv Engineer, Vizianagaram.
5.The Vizianagaram Municipality, Vizianagaram, Rep. by its Assistant Engineer, Vizianagaram.

.....RESPONDENTS

Counsel for the Appellant: Mr. METTACHENDRA SEKHAR RAO

Counsel for the Respondent No.1: GP FOR REVENUE

Counsel for Respondents 2 to 5: Mr.S.ageswara Reddy.

WRIT PETITION No.10618 OF 2004

Between:

Balla Lakshmana Rao, S/o.Nageswara Rao,
R/o.Indira Nagar, near S.P.Bangalow,
Vizianagaram,Dist.

..... PETITIONER

AND

1.The District Collector, Vizianagaram Dist. Vizianagaram.
2.The Vizianagaram Municipality, Vizianagaram. rep. by its Commissioner.
3.The Vizianagaram Municipality, Vizianagaram rep. by its Engineer,Grade-I, Vizianagaram.
4. The Vizianagaram Municipality, Vizianagaram, rep. by its Deputy Executive Engineer, Vizianagaram.
5. The Vizianagaram Municipality, Vizianagaram, rep. by its Asst.Engineer, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or direction, more particularly, one in the nature of Writ of Mandamus, or any other appropriate writ, to direct the respondents to finalize the bill amount of Rs.12,16,817/-as per M-Book i.e.1/02-03 A.E.Electrical Engineer, Vizianagaram Municipality, Vizianagaram, and pay an amount of Rs,10,66,817/- (12,16,817-1,50,000) to the petitioner forthwith.

Counsel for the Appellant/petitioner: Mr.Metta Chandrasekhar Rao

Counsel for the Respondent No.1 in WA & WP: GP FOR REVENUE

Counsel for Respondents 2 to 5 in WA & WP: Mr.S. Nageswara Reddy.

The Court made the following :

ORAL JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

The Writ Petition was dismissed for default. Application for restoration, when filed, was also dismissed on the ground that the counsel appearing for the counsel for petitioner requested for adjournment in the said application also.

We have heard the learned counsel for the appellant and been taken through the record.

We are of the view that that the Writ Petition can be disposed of by a short order. We allow the Writ Appeal and set aside the order of dismissal of the restoration application and order the restoration of the Writ Petition.

Writ Petition was filed by the petitioner alleging that the respondents are not finalizing the bill amount as per M.Book, and, are not paying the amount to the petitioner forthwith. Petitioner says that work was carried out by the petitioner, which was allotted to him. Work was completed within a period of 11 months and 5 days without any disturbance. The fifth respondent measured the execution of work and noted the same in M.Book. Thereafter, entire amount was not paid and only an amount of Rs.1,50,000/- was paid out of the total amount of Rs.12,16,817-00, and, despite request thereafter, bill amount has not been settled.

The transaction between the parties being purely of contractual in nature, in case, petitioner is aggrieved, his remedy will be to file suit for recovery, and, in case, there is arbitration clause, to invoke the same to have the matter referred to the arbitrator. Filing of Writ Petition is misconceived. There is no document placed on record to show that there was any acknowledgement of respondents of the amount due and payable to the petitioner. As such, we dismiss the Writ Petition and relegate the appellant for invocation of civil court jurisdiction or to seek arbitration. No costs.

DEVINDER GUPTA, C.J.

31-12-2004

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M.NARAYANA REDDY, J.

VR.

To

1.The District Collector, Vizianagaram District, Vizianagaram.
2.The Commissioner, Vizianagaram Municipality, Vizianagaram.
3.The Engineer, Grade-I, Vizianagaram Municipality, Vizianagaram.
4.The Deputy Executive Engineer, Vizianagaram Municipality, Vizianagaram.
5.The Assistant Engineer, Vizianagaram Municipality, Vizianagaram.

6. Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).

7. Two CD copies.